IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12107 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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IOC LTD

Versus

HASHMUKH PANNALAL MAJMUDAR

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Appearance:

MR MANISH R BHATT for the Petitioner.

MR SJ SHAH for the Respondent.

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/10/2001

ORAL JUDGEMENT

1. This petition is directed against the Award dated 15.4.2000, passed by the Industrial Tribunal, Vadodara, in Reference (ITC) No.1 of 1992. By the impugned Award, the Tribunal has partly allowed the Reference and the petitioner was directed to reinstate the respondent-workman on his original post, with 25% back

wages.

2. The respondent workman was, initially, appointed as a Clerk-cum-Typist in the year 1974 and he was, subsequently, promoted as Senior Clerk in 1978 and in 1983, he was promoted as Office Assistant. As Office Assistant, he was in charge of processing leave applications, leave encashment, L.T.C. applications of the employees, etc. The respondent was subjected to charge-sheet on 13.8.1987 as regards various misconducts committed by him during the period between 1984 and May, 1986. Copy of the charge-sheet is produced at Annexure `1'. As per the said charge-sheet, dated 13th August, 1987, the respondent was subjected to following acts of misconduct :-

" ... ... ...

1. You have falsified the leave entries either by erasing and / or overwriting in the service book/leave encashment applications.

2. You have omitted to make necessary entries in the service books of the employees.

3. You have fraudulently misappropriated the monies of the Corporation and / or aided the other employees to misappropriate the monies of the Corporation.

4. You have forged the signature of the officer on the leave encashment application to get the benefit.

5. In two cases encashment was allowed even before the leave became actually due.

6. Either yourself or in connivance and or collusion with the concerned employee, you have acted against the interest of the Corporation.

7. You have gained illegal benefit thus by encashing leave not due to you and accepted illegal gratification for obliging other employees.

The facts leading to the aforesaid acts are :

(a) Your own service book and leave encashment application.

(i) In leave encashment application dated 8.1.1985, the entry in the service book shows 5 days where as you have actually availed encashment of 25 days. You have converted the 5 days on application to 25 resulting in excess encashment of 20 days.

(ii) In leave Encashment application dated 11.2.1985 there is encashment of 10 days leave while there is absolutely no entry in the service book. Also it appears that you have forged the signature of officer Shri B.Arunkumar. This reveals that you have drawn encashment for 10 days by forging the signature of the officer.

(iii) In leave encashment application dated 10.9.1985 there is encashment of 30 days leave, while there is no entry in the service book. The Officer Shri B. Arunkumar's signature appears to have been forged resulting in the benefit of 30 days encashment.

... ... ...."

3. Subsequently, Enquiry Officer was also appointed for the purpose of conducting departmental enquiry against the respondent-workman. Therafter, by letter dated 16th May, 1988, which is at page 28 in the compilation, the respondent-workman made a voluntary statement, on his own free will, before the Enquiry Officer. In the aforesaid statement, he has admitted the charges levelled against him. He tendered unconditional apology for the acts of misconduct. In his letter, he prayed that a compassionate view may be taken in his case. The relevant part of the aforesaid letter tendered by him to the Enquiry Officer dated 16th May, 1988 is

reproduced as under :-

> " ... ... ...
>
> I admit the charges levelled against me vide charge-sheet No.P/I/56451 dated 13.8.87. I, therefore, submit an unconditional apology for the acts of misconduct as detailed in the charge-sheet referred to above.
>
> I request to the Enquiry Officer that keeping in view my age, the family circumstances and fact that I have voluntarily admitted my guilt recommended to the disciplinary authority that compassionate view may be taken in my case. For this act of kindness I shall ever remain grateful.
>
> I assure that I shall never repeat such acts again and shall work with utmost honesty and sincerity in future.
>
> ... ... ...."

Therafter, second hearing of enquiry proceedings took place and the Minutes of the same is produced at Annexure `3', page 29. At that time, the respondent-employee was also present. The respondent No.2 has also put his signature on the same. In the said Minutes of the enquiry proceedings, it is clearly stated that the Enquiry Officer enquired from the charge-sheeted employee Shri H.P. Majmudar as to why his co-worker had not turned up for the enquiry and that he explained that the co-worker was not required and he himself will be pleading his case. The enquiry officer read out the charge-sheet to the charge-sheeted employee and asked him whether he accepts the charges or not and on that, he confirmed that he is accepting all the charges mentioned in the charge-sheet dated 13.8.1987 and he has also further stated before the Enquiry Officer that he is accepting the guilt on his own free will without there being any force, threat, intimidation or coercion. Ultimately, the Enquiry Officer submitted his report, which is at Annexure `4', page 31.

Therafter, the Disciplinary Authority passed the final order dated 20.12.1988, which is at Annexure `5', page 33. The Disciplinary Authority came to the conclusion that the charges are serious in nature and

considering the same, the penalty of dismissal is an adequate penalty under Clause 23 I (e) read with sub-clause III (d) of the Certified Standing Orders. The Disciplinary Authority, accordingly, dismissed the charge-sheeted employee with immediate effect.

4. Therafter, the petitioner gave an application to the Executive Director of the Refinery dated 12th January, 1989, which is produced at page 35, Annexure `6' in the compilation. In his petition, which he branded as "Mercy Petition", he had stated that the dismissal order is very harsh and that, it will destroy his family and jeopardise the future of his children without there being any fault on their part. In his said application, he has also stated that he will not indulge in any act in future, which is against the Rules and morally forbidden. In that petition, he prayed for sympathetic consideration of his mercy petition.

By order dated 12.6.1989, the Executive Director came to the conclusion that the enquiry was conducted in a fair manner and in consonance with the principles of natural justice. It was found that sufficient opportunity was given to the delinquent employee. It was found that the punishment of dismissal was adequate and reasonable looking to the facts of the case. Accordingly, the aforesaid mercy petition was rejected by the Executive Director.

5. Thereafter, the respondent-workman filed an appeal before the Chairman of the Indian Oil Corporation Limited, New Delhi, by letter dated 22.5.1990. The said appeal was also dismissed. The respondent-workman thereafter took recourse of the provisions of the Industrial Disputes Act by making an application to the Assistant Labour Commissioner (Central), Ahmedabad, which resulted into Failure Report. Therafter, the Government of India, Ministry of Labour, referred the alleged `dispute' for adjudication before the Industrial Tribunal, Vadodara. Initially, the said Reference was made to the Industrial Tribunal, Ahmedabad, and subsequently, it was transferred to the Industrial Tribunal, Baroda, wherein it was numbered as Reference (I.T.C) No.1 of 1992. After considering the evidence of the parties and after hearing the concerned parties, the Industrial Tribunal, Vadodara, by its Award dated 15.4.2000, partly allowed the said Reference. The Tribunal passed an Award of reinstatement in favour of the respondent-workman, with 25% back wages. The aforesaid Award is impugned in the present petition at the instance of the petitioner-Indian Oil Corporation.

6. At the time of hearing of this Special Civil Application, it was argued by Mr.M.R. Bhatt, learned Advocate appearing for the petitioner, that the impugned Award is unsustainable as the Tribunal has failed to take into account the relevant facts and circumstances of the case. It was argued by Mr.Bhatt that the factual statement made in the Award is not correct as the Tribunal has observed that the charge-sheet is given after a period of three years from the date of the incident. He submitted that there is no such delay of three years and that the aforesaid statement in the Award is factually not correct. Mr.Bhatt also further submitted that the concerned workman, on his own free will and volition, admitted the charges levelled against him and once he has pleaded guilty to the charges, no further enquiry was required to be held against him by the Enquiry Officer.

It is required to be noted that the Tribunal, while allowing the Reference partly, came to the conclusion that the charge-sheet was given after a period of three years and since no explanation is given for serving the charge-sheet at a late stage, the charge-sheet is required to be quashed and set aside. The Tribunal also came to the conclusion that it cannot be said that the charges against the workman are proved and, on the aforesaid two grounds, i.e, delay in serving charge-sheet as well as on the ground that the charges are not proved, the aforesaid Reference of the workman was partly allowed by passing an Award of reinstatement with 25% back wages. The Tribunal also came to the conclusion, by observing in paragraph 8 of the Award, that the concerned workman has merely stated that he is tendering unconditional apology, but he has never said that he is accepting the charges levelled against him. The Tribunal also came to the conclusion, in paragraph 10 of the Award, that the Enquiry Officer has given his findings only on the basis of the statement of the workman pleading guilty to the charges. The Tribunal came to the conclusion that the Enquiry Officer has not stated in his report as to the charges which are proved against the concerned workman and the Enquiry Officer has found that the charges are proved merely on the basis of the statement of the workman pleading guilty to the charges. The Tribunal, therefore, come to the conclusion that the charges against the workman are not proved in the enquiry. The aforesaid part of the reasoning is in paragraph 10 of the Award. Accordingly, on the ground that the charge-sheet was served after three years from the so-called incident as well as on the ground that

since the Enquiry Officer has not given finding that the charges are proved against the concerned employee by giving reasons, the enquiry was vitiated and, ultimately, therefore, the aforesaid Award was passed.

7. Mr.Shah, appearing for the respondent, however, submitted that the so-called statement of the workman, by which he pleaded guilty, was not by way of free will and, therefore, regular enquiry should have been held against the employee. He further submitted that on behalf of the workman, various other points were raised, but the Tribunal, having accepted the Reference mainly on two grounds, did not deal with the other contentions canvassed on behalf of the workman, such as, not considering the question of penalty by the Disciplinary Authority objectively, as well as not giving copy of the report of the Enquiry Officer before passing the final order, as well as not giving hearing on the question of punishment before passing dismissal order. Mr.Shah also further submitted that, in any case, under Section 11-A of the Industrial Disputes Act, lesser penalty can be inflicted on the delinquent employee.

8. Both the sides cited various judgments to substantiate their say, to which I will refer later on.

9. I have heard both the sides in great detail and I have also gone through the Award of the Tribunal. In passing the aforesaid order, it seems that the Tribunal has taken a casual approach of the whole matter. It is not in dispute that before the Tribunal, a Pursis was given by the workman at Exhibit 53, wherein he has clearly stated that he is not challenging the legality and validity of the enquiry proceedings. It is also required to be noted that the concerned workman has never said at any point of time that he had pleaded guilty of the charges under some coercion or force. In fact, after admitting his guilt before the Enquiry Officer, even at the second stage of the enquiry proceedings, when a specific question was asked by the Enquiry Officer, whether he is pleading guilty voluntarily or not, he had stated that the aforesaid statement of pleading guilty was voluntarily made and that there was no force or coercion. Even the Notings of the second stage of the enquiry proceedings was also signed by him, Minutes of which is produced in the compilation of this petition. Even in his mercy petition, there is not a single word that the aforesaid aspect of pleading guilty was by way of force or coercion. Even in the appeal memo, which the concerned workman preferred, no such grievance was made. In fact, at no point of time, therefore, any such

grievance was made by the concerned workman in any manner. Simply because, initially, in reply to the charge-sheet, the respondent has not admitted his guilt is no ground for coming to the conclusion that, subsequently, when he pleaded guilty before the Enquiry Officer, such voluntary statement made by him is not required to be accepted. Once there is a clear cut admission on the part of the concerned workman, in my view, the Enquiry Officer was not required to proceed with the departmental enquiry by examining other witnesses, as it was not required in view of the aforesaid admisison of his guilt on the part of the workman. The Tribunal has, therefore, not considered the aforesaid aspect properly and finding on the same is absolutely a casual one. Once the concerned workman has pleaded guilty to the charges and when there is nothing on record to show that the said statement is not a voluntary statement at all and especially when even subsequently, in his subsequent application, the workman had never complained about the aforesaid aspect about his aforesaid admission, it is difficult to appreciate the reasoning given by the Industrial Tribunal in coming to the conclusion that the Enquiry Officer was still required to proceed with the enquiry and was required to give finding on each of the charges levelled against the concerned workman. The concerned workman had pleaded guilty to the charges which were levelled against him and, therefore, it was not necessary for the Enquiry Officer therafter to give reasons for coming to the conclusion that the charges against the concerned workman are proved.

10. Similarly, the factual statement which finds place in the Award that the charge-sheet was issued after a period of three years from the alleged incident is not factually correct. Even Mr.Shah, the learned Advocate, clearly stated that the said statement recorded in the order is not correct. There were some charges which were related to the year 1985-1986 and the charge-sheet was issued in 1987. The Tribunal should have taken appropriate care before making such sweeping statement in the Award that the charges are levelled after a period of three years. Once a statement of fact is incorporated in the order, care is required to be taken to see that such statement is correct and is based on documentary evidence on record. In the instant case, the Tribunal has come to the conclusion that since the charge-sheet is issued after three years from the alleged incident, the charge-sheet, is required to be quashed and set aside. Before coming to the conclusion, care was required to be taken by the court and the Court should have found that

the charges are related to 1985-1986 and the charge-sheet was issued in 1987. Such casual approach on the part of the Tribunal is, therefore, deprecated. It is hoped that, in future, appropriate care will be taken by the Court while incorporating the factual aspect of the dispute in the Award. Even otherwise, once the concerned workman has already accepted the charges by pleading guilty, it is difficult to appreciate the reasoning given by the Tribunal that since the charge-sheet is issued after a period of three years, the same is required to be quashed and set aside. Even such plea was never taken by the concerned workman at any point of time.

11. It is also required to be noted that the concerned workman had given a Pursis at Exhibit 53, by which he has clearly stated that he is not challenging the legality and validity of the enquiry proceedings. In that view of the matter, and in view of what is stated above, the Tribunal has clearly committed an error in coming to the conclusion that the charge-sheet is required to be quashed on the ground of delay as well as on the ground that the enquiry officer, who was required to give finding that the charges are proved against the concerned employee by giving reasons, against each of the charges which were levelled against the concerned workman, did not give such finding.

12. Both the sides have relied on the decision of the Apex Court in The Central Bank of India Ltd. v. Karunamoy Banerjee, AIR 1968 SC 266. Reference is required to be made to paragraph 19 of the said judgment :-

> " ... ... ...
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> 19. We must, however, emphasize that the rules of natural justice, as laid down by this Court, will have to be observed, in the conduct of a domestic enquiry against a workman. If the allegations are denied by the workman, it is needless to state that the burden of proving the truth of those allegations will be on the management and the witnesses called by the management, must be allowed to be cross-examined, by the workman, and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose, in support of his plea. But, if the workman admits his guilt, to insist upon the management to let in evidence

about the allegations, will, in our opinion, only be an empty formality. In such a case, it will be open to the management to examine the workman himself, even in the first instance, so as to enable him to offer any explanation for his conduct, or to place before the management any circumstances which will go to mitigate the gravity of the offence. But, even then, the examination of the workman, under such circumstances, should not savour of an inquisition. If, after the examination of the workman, the management chooses to examine any witnesses, the workman must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence that he may choose.

... ... ...."

13. Mr.Bhatt has also relied upon the decision of the Apex Court in Additional District Magistrate (City) Agra v. Prabhakar Chaturvedi and another, (1996) 2 SCC 12. It has been observed by the Honourable Supreme Court as under :-

" ... ... ...

4. Having considered the rival contentions and also having gone through the written submissions filed on behalf of respondent 1 we find that the order of the High Court cannot be sustained. So far as non-supply of Enquiry Officer's report is concerned it has to be kept in view that no such contention was raised in the writ petition before the High Court. The High Court has noted this aspect. Nothing could be pointed out to us by learned counsel for the respondents to controvert this observation of the High Court. Whether the pleadings in the writ petition should be treated as pleadings in a suit or not is not relevant for deciding this question. Reliance placed in the written submission on R. v. Barnsley Metropolitan Borough Council also is of no avail to respondent 1. The said decision cannot support the contention canvassed on behalf of respondent 1 that even if there is no

grievance made in the writ petition the High Court is bound to consider the said grievance. So far as the grievance about the non-examination of witnesses and non-supply of documents is concerned, in our view, the High Court has erred in ignoring the salient features of the case, namely, that respondent 1 himself by his statement dated 14.12.1984 admitted to have received an amount of Rs.21,000 and odd and which could not be deposited by him along with his associate on account of their carelessness and fault. It is difficult to appreciate how the said statement could be said to have been brought about by any coercion as tried to be submitted on behalf of respondent 1. But even apart from that the order sheet of the Enquiry Officer clearly shows that respondent 1 Prabhakar as well as Sajan Kumar had submitted that they have not to give any documentary or oral evidence and that is how their evidence was closed. Under these circumstances the subsequent request by respondent 1 to examine four more witnesses was rightly considered by the Enquiry Officer to be an afterthought and accordingly such request was rightly rejected. In fact on account of the clear admisison contained in writing given by respondent 1 on 14.12.1984 the charge against him stood proved on admission and the only question that remained to be considered was about the nature of punishment to be imposed on him. When respondent 1 was guilty of misappropriation of such a large amount of Rs.21,000 and odd for couple of months it could not be said that the punishment of dismissal as imposed on him was in any way uncalled for or was grossly disproportionate to the nature of the misconduct proved against respondent 1. For all these reasons the order of the High Court cannot be sustained and is, therefore, quashed and set aside. The writ petition filed in the High Court will stand dismissed. However, in the facts and circumstances of the case there will be no order as to costs.

... ... ...."

14. Reference is also required to be made to the decision of the Apex Court in Aligarh Muslim University and others v. Mansoor Ali Khan, 2000 AIR SCW 2976, wherein the Honourable Supreme Court has held as under :-

> " ... ... ...
>
> 20. As pointed out recently in M.C. Mehta v. Union of India, (1999) 6 SCC 237 : 1999 AIR SCW 2754 : (AIR 1999 SC 2583), there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao v. Government of Andhra Pradesh, (1965) 2 SCR 172 : (AIR 1966 SC 828), it is not necessary to quash the order merely because of violation of principles of natural justice.
>
> 21. In M.C. Mehta it was pointed out that at one time, it was held in Ridge v. Baldwin (1964) AC 40, that breach of principles of natural justice was in itself treated as prejudice and that no other `de facto' prejudice needed to be proved. But since then the rigour of the rule has been relaxed not only in England but also in our country. In S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379 : (AIR 1981 SC 136), Chinnappa Reddy, J. followed Ridge v. Baldwin and set aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.
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> 22. Chinnappa Reddy, J. in S.I.Kapoor's case (AIR 1981 SC 136), laid two exceptions

(at p. 395 of SCC) : (at pp. 147 and 148 of AIR) namely, "if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

xxx xxx xxx

24. The `useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above,-there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C.Mehta, 1999 AIR SCW 2754 : (AIR 1999 SC 2583), referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Singham, Megarry, J. and Straughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary, in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

... ... ...."

15. Mr.Shah, on the other hand, has relied upon the decision of this Court Ashwin N. Parekh v. Union of India and others, 1986(1) GLR 569. It has been observed

in paragraph 5 as under :-

" ... ... ...

5. Rule 2501(b)(i) provides that such of those casual labourers who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment. It is, therefore, clear on a conjoint reading of the above rules that the petitioner who had worked as a casual labourer for almost six years at a stretch without break had acquired the status of a temporary servant and was, therefore, entitled to the rights and privileges admissible to such servants, including the benefits/protection of the Discipline and Appeal Rules. Break in service has been explained in Rule 2504 and authorised absence for a period not exceeding 15 days during the preceding six months is not to be considered break in service. The Note below Rule 2504 states that unauthorised absence or stoppage of work or the intervening period when the workman on his own changes from one work to another will be treated as a break in continuity of employment. In the present case, there is nothing on record to show that the petitioner had during his tenure from 1972 to 1978 been guilty of unauthorised absence, stoppage of work or change from one work to another on his own accord. In fact the learned counsel for the railway administration had to concede that prior to the issuance of the show cause notice, Annexure "D", dated 5th April, 1978, the record did not disclose unauthorised absence or authorised absence exceeding six months. On the contrary, the letter of 10th January, 1978 shows that he was on authorized absence during the periods mentioned therein. There can, therefore, be no doubt that the status of a temporary servant was conferred upon the petitioner on a combined reading of Rule 2511(b)(i) read with Rule 2511(a) of the Manual.

... ... ...."

It has been further observed in the said decision as under :-

" ... ... ...

8. It was however urged by the learned counsel for the railway administration that after the incident in question, the petitioner had given a statement to the ticket checker and had subsequently addressed a communication dated 20th July, 1977 and a mercy petition dated 21st November, 1977 wherein he had clearly admitted the alleged misconduct. Assuming for the sake of argument that these statements were voluntarily made, though the delinquent alleges that they were obtained under duress, such statements would only form the basis of evidence which could be used against the delinquent at the departmental inquiry. It was after these statements or communications were made to the railway administration that the railway administration decided to serve petitioner with a charge-sheet on 5th April 1978. Under Rule 9(6) of the rules the statement of imputation of misconduct or misbehaviour in support of the article of charge must include all the relevant facts including any admission or confession made by the railway servant. This clearly shows that admissions or confessions made by the railway servant are merely pieces of evidence which can be relied upon in the course of the departmental inquiry by the presiding officer. Only when they are relied upon can the petitioner challenge them as having been obtained under duress. The petitioner would otherwise have no opportunity to point out that these statements were not voluntary and were obtained under circumstances which could be described as coercive. It is, therefore, difficult to accede to the submission of the learned counsel for the railway administration that in view of the admissions made by the petitioner in the aforesaid documents it was not necessary

> for the department to go through the rigmarole of a regular departmental inquiry before terminating the services of the petitioner, a temporary railway servant. It is by now well settled that even the services of a temporary servant cannot be terminated by way of punishment for alleged misconduct unless the misconduct is established at a regular departmental inquiry held against him. I am, therefore, of the opinion that the impugned order of 1st June, 1978, Annexure "H", cannot be sustained.
>
> ... ... ...."

However, in the instant case, enquiry proceedings were initiated against the delinquent employee and before the Enquiry Officer, the respondent-workman had voluntarily pleaded guilty to the charges levelled against him. Therefore, the aforesaid decision cannot come to the rescue of the respondent-workman. It is also required to be noted that at no point of time, the concerned workman has ever stated that he had pleaded guilty to the charges under some force or threat and, therefore, since he has voluntarily admitted the charges, the Enquiry Officer came to the conclusion that the charges are proved on his own admission. In the facts of the case, therefore, the aforesaid case is not applicable in the instant case.

16. Mr.Shah has also relied upon the judgment of a learned single Judge in Navin Fluorine Industries v. Kirit Thomas Rathod, 1995(2) G.L.H. 514, wherein this Court has found that on going through the entire reply, one cannot form an opinion that there is a clear admisison of the offence and on the basis of which the employer can straight away retrench the service of the petitioner workman without holding any enquiry and without giving any opportunity to the workman to explain. However, in the instant case, once there is a clear cut admission on the part of the concerned workman pleading guilty to the charges and looking to the seriousness of the charges, ultimately, the Disciplinary Authority passed the aforesaid order of dismissal. It is required to be noted that the admission of the concerned workman was by way of free will and not by way of any coercion or on any other ground. There is no ambiguity at all in the aforesaid admission on the part of the concerned workman. In spite of that, to hold detailed enquiry, after the aforesaid admission, would be an empty formality and, therefore, in my view, if the Enquiry Officer has based

his report considering the aforesaid admission of guilt on the part of the respondent, nothing can be found fault with.

17. Having realised the difficulty in getting the order of the Tribunal sustained, Mr.Shah, for the respondent, argued that as per the principles of natural justice as well as on the basis of Certified Standing Orders, the concerned workman was required to be given a copy of the Enquiry Officer's report.

So far as the Certified Standing Orders of the petitioner-Corporation are concerned, Mr.Shah has strongly relied upon the provisions regarding Penalties for Misconduct incorporated in Order 23 of the aforesaid Certified Standing Orders. Mr.Shah has particularly placed reliance upon Orders 23. IV and 23. IV. (h). Order 23.IV(c) reads as under :-

> " ... ... ...
>
> 23. ... ... ...
>
> IV. SUSPENSION PENDING ENQUIRY :
>
> xxx xxx xxx
>
> (c) If during the enquiry it is found that the employee is guilty of a misconduct other than that stated in the order of suspension and or the charge-sheet, the employee shall be liable to punishment for such misconduct but before any punishment is imposed on him, he shall be afforded a reasonable opportunity of explaining and defending his action in respect of such misconduct.
>
> ... ... ...."

It is required to be noted that, during the pendency of the enquiry, if it is found that the employee is guilty of some other misconduct other than one for which he is charged, in such cases, before imposing any penalty on him, he is required to be given reasonable opportunity to explain and defend his action in respect of such misconduct. The aforesaid provision cannot be said to be applicable to the facts of the present case. It is not a case in which one can say that during the pendency of a

particular enquiry, other misconduct is found against the employee and, therefore, reference to the aforesaid Order is absolutely misplaced.

Mr.Shah has, however, relied upon Clause (h) of Order 23 IV of the Standing Orders and has argued that before imposing final order of punishment, the concerned workman was required to be heard. Order 23. IV. (h) of the Certified Standing Orders reads as under :-

> " ... ... ...
>
> 23. ... ... ...
>
> IV. SUSPENSION PENDING ENQUIRY :
>
> ... ... ...
>
> (h) In awarding punishment of dismissal under this Standing Order, the General Manager or the Head of the Deptt. or such other Officer authorised by the General Manager shall take into account the gravity of the misconduct, the previous record of service, if any, of the employee concerned and any other extenuating or aggravating circumstances that may exist.
>
> ... ... ...."

In the instant case, the Disciplinary Authority has given cogent reasons in coming to the conclusion that looking to the gravity of charges, it is a fit case in which the

dismissal order is required to be passed. The Disciplinary Authority has, therefore, applied his mind in reaching the conclusion about the final order of punishment. Looking to the gravity of the charges also, it cannot be said that the Disciplinary Authority has committed any error in imposing such maximum penalty on the concerned delinquent employee. Looking to the gravity of the charges which are levelled against the respondent-workman, which are ultimately found to be proved, it is not incumbent upon the Disciplinary Authority to refer to the past record in passing the order of dismissal.

Even otherwise, since the petitioner has pleaded

guilty to the charges, he very well knew the outcome of the enquiry proceedings. It is not a case where the delinquent was not aware as to the finding of the Enquiry Officer, because, in view of the admisison, he knew that the charges are proved against him by virtue of his admission. Therefore, in the facts of the case, non-supply of Enquiry Officer's report would be hardly of any importance.

18. Mr.Shah has relied upon the decision of this Court in H.P.Thakore v. State of Gujarat & Ors., XX GLR 109 for submitting that the Disciplinary Authority must apply its mind to vital considerations regarding nature and magnitude of the charge and the Disciplinary Authority must make an honest attempt to ascertain a just penalty. In my view, it cannot be said that the Disciplinary Authority has not applied his mind on the question of penalty and looking to the gravity of the charge, it cannot be said that the order of dismissal was not justified.

19. On behalf of the respondent-workman, it was strongly argued that the copy of the Enquiry Officer was not made available earlier and the respondent-workman was not given opportunity to submit his explanation or was not permitted to make representation on penalty before passing dismissal order and that the copy of the report was given to him only at the time of passing the dismissal order. He has relied upon the decisions in Managing Director, ECIL, Hyderabad v. B. Karunakar, 1994 I L.L.J. 162 and Messrs. Lakshmiratan Cotton Mills Co. Ltd. v. Its Workmen, 1975 II L.L.J. 174. In the decision in 1994 I L.L.J. 162 (supra), it has been observed by the Supreme Court that though furnishing of the Enquiry Officer's report to the delinquent employee is a part of the reasonable opportunity available to him to defend himself against the charges, before the 42nd Amendment of the Constitution, the stage at which the said opportunity became available to the employee had stood deferred till the second notice, requiring him to show cause against the penalty, was issued to him. The Honourable Supreme Court held as under :-

> " ... ... ...
>
> 33. Questions (vi) and (vii) may be considered together. As has been discussed earlier, although the furnishing of the Inquiry Officer's report to the delinquent employee is a part of the reasonable opportunity available to him to defend

himself against the charges, before the 42nd Amendment of the Constitution, the stage at which the said opportunity became available to the employee had stood deferred till the second notice requiring him to show cause against the penalty was issued to him, the right to prove his innocence to the disciplinary authority was to be exercised by the employee along with his right to show cause as to why no penalty or lesser penalty should be awarded. The proposition of law that the two rights were independent of each other and in fact belonged to two different stages in the inquiry came into sharp focus only after the 42nd Amendment of the Constitution which abolished the second stage of the inquiry viz., the inquiry into the nature of punishment. As pointed out earlier, it was mooted but not decided in E.Bashyan's case (supra) by the two learned judges of this Court who referred the question to the larger Bench. It has also been pointed out that in K.C. Asthana's case (supra), no such question was either raised or decided. It was for the first time in Mohd. Ramzan Khan's case that the question squarely fell for decision before this Court. Hence till November 20, 1990, i.e. the day on which Mohd. Ramzan Khan's case (supra) was decided, the position of law on the subject was not settled by this Court. It is for the first time in Mohd. Ramzan Khan's case (supra) that this Court laid down the law. That decision made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after November 20,1990. The law laid down was not applicable to the order of punishment passed before that date notwithstanding the fact that the proceedings arising out of the same were pending in courts after that date. The said proceedings had to be decided according to the law prevalent prior to the said date which did not require the authority to supply a copy of the Inquiry Officer's report to the employee. The only exception to this was where the service rules with regard to the disciplinary proceedings themselves made it

obligatory to supply a copy of the report to the employee.

... ... ...

45. The need to make the law laid down in Mohd. Ramzan Khan's case (supra) prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account.

... ... ...."

In the instant case, at the relevant time, there was no such requirement in the Certified Standing Orders regarding giving a second show cause notice or hearing delinquent on the question of penalty.

In 1975 II L.L.J. 174 (supra), the Honourable Supreme Court held as under :-

" ... ... ...

10. Here, in the present case, it is obvious from the various timings notified to the erring workmen at which the domestic enquiry would be held against different groups of workmen, that the domestic enquiry against the first group of workmen must have commenced at 10 a.m. and against the last group of workmen, it must have ended not earlier than 9.15 p.m. on 21st October, 1972. The Labour Officer must then have prepared his reports setting out the conclusions reached by him on the evidence recorded at the domestic enquiry and these reports must therafter have been forwarded by the Labour Officer to the Manager of the appellant. The manager of the appellant, on receipt of these reports from the Labour Officer, must have considered the cases of these different groups of workmen in the light of these reports and the evidence recorded at the domestic enquiry for the purpose of satisfying himself prima facie that the workmen were guilty of the misconduct charged against them, before issuing notices calling upon them to show cause why they should not be dismissed from service. This whole procedure must have taken a certain amount of time and the show cause notices, inter alia, to the twenty-one workmen concerned in this appeal, could, therefore, have been issued at the earliest not before 10.30 p.m. on 21st October, 1972. Now, admittedly, no attempt was made to serve the show cause notices on any of these twenty-one workmen and the only mode in which service was purported to be effected was by pasting the show cause notices on the notice board of the mill. We may point out that this mode of service adopted by the appellant was wholly unjustified and that in itself introduces a serious infirmity in the domestic enquiry, unless it can be shown by the appellant that these twenty-one workmen were otherwise aware of the contents of the show-cause notices and no prejudice was occasioned to them by reason of non-service of the show cause notices. Of that, however, there is no evidence, as there is nothing to show that these twenty-one

workmen, read the show cause notices on the notice board of the mill. It must be remembered that almost all the workmen of the appellant, including these twenty-one workmen, were on strike and no presumption can, therefore, be drawn that they would look at the notice board and read the show cause notices pasted on it. But, even if we assume in favour of the appellant that these twenty-one workmen must have looked at the notice board and seen what was pasted there, it is clear from what is stated above that the show cause notices could not have been pasted on the notice board before 10.30 p.m. on 21st October, 1972. If that be so, the earliest that these twenty-one workmen could possibly come to know of the show cause notices would have been the next day, that is 22nd October, 1972, but that day happened to be a closed day for the mill and none of these twenty-one workmen could, therefore, be expected to be present and was in fact present at the mill, so that he could come to know about the show cause notices by looking at the notice board. These twenty one workmen could not, in the circumstances, have looked at the notice board earlier than 23rd October, 1972, when they came to the mill in the morning for the purpose of their sit-in-strike. But the time specified in the notices within which these twenty one workmen were required to show cause against the proposed punishment of dismissal was 10 a.m. on 23rd October, 1972 and that would mean that they had hardly a couple of hours within which to show cause against the action proposed to be taken against them. It does not need much argument to come to the conclusion that this could hardly be regarded as affording a reasonable opportunity to these twenty one workmen to show cause against the proposed punishment of dismissal. There can, therefore, be no doubt that there was not only non-compliance with the requirements of cl. (c) of Standing Order 26 but also infraction of the principles of natural justice. The orders of dismissal passed against these twenty one workmen could not,

in the circumstances, be justified on the basis of the domestic enquiry held by the appellant.

... ... ...."

20. At this stage, reference is also required to be made to the judgment of the Apex Court in Oriental Insurance Co. Ltd. v. S. Balakrishnan, 2001 AIR SCW 2450, wherein the Honourable Supreme Court held as under :-

" ... ... ...

2. Though the order of the learned single Judge is the main order, notwithstanding the order of the Division Bench having affirmed the same, it is unfortunate that the order has not been appended in the present appeal, which indicates utter negligence on the part of the employer in prosecuting its remedies before the Court. The counsel wanted an adjournment to file a copy of that order, but we are not prepared to adjourn this matter on that score. The question, however, still remains to be considered is whether the High Court was justified in interfering with an order of punishment passed by the disciplinary authority merely on the ground that non-supply of enquiry report has vitiated the entire proceedings. It had not been brought to the notice of the learned Judges of the Court that the judgment of this Court in Ramzan Khan has already been considered by this Court in the case of Managing Director, ECIL, Hyderabad v. B. Karunakar, (1993) 4 SCC 727 : (1994 AIR SCW 1050 : AIR 1994 SC 1074 : 1994 Lab IC 762) which is a Constitution Bench decision of the Court, and which clarifies the entire position. Without being aware of the correctness of law, the High Court appears to have interfered with an order of dismissal passed in a disciplinary proceedings in grave charges like the one with which we are concerned in the present case. Applying the principles indicated by this Court in ECIL case to the facts of the present case, we cannot conceive any prejudice which is said to have been caused

to the delinquent, and therefore non-supply of the enquiry report could not have been held to have vitiated the entire proceedings. In the aforesaid premises, we set aside the impugned order passed by the learned single Judge of the High Court as well as the judgment of the Division Bench of the High Court, and hold that the writ petition filed by the respondent stands dismissed. In view of the nature of charges against the delinquent, we were considering of directing to lodge a First Information Report for criminal investigation, but we are told that the University has already taken that steps and, therefore, we refrain from issuing any further direction in the matter.

... ... ...."

21. Reference is also required to be made to the decision of the Apex Court in State of U.P. v. Harendra Arora and another, AIR 2001 SC 2319, which has bearing regarding requirement of furnishing copy of the enquiry officer's report to the delinquent employee. It has been held by the Apex Court in paragraph 14 as under :-

" ... ... ...

14. Even under general law, i.e. the Code of Civil Procedure, there are various provisions, viz., Sections 99-A and 115 besides Order 21, Rule 90 where merely because there is defect, error or irregularity in the order the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Code of Criminal Procedure also Section 465 lays down that no finding, sentence or order passed by a competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice, has, in fact, been occasioned thereby. We do not find any reason why the principle underlying the aforesaid provisions would not apply in cases of the statutory provisions like Rule 55-A of the Rules in relation to disciplinary proceeding. Rule 55-A referred to above

embodies in it nothing but the principles of reasonable opportunity and natural justice.

... ... ...."

22. So far as Mr.Shah's contention about invoking the provisions of Section 11-A of the I.D. Act is concerned, in my view, if the charges against the concerned workman are proved, it is a fit case in which the dismissal order is required to be upheld. Reference is required to be made to the decision of the Apex Court in Janatha Bazar v. Secretary, 2000 SCC (L&S) 962, wherein the Honourable Supreme Court has held as under :-

" ... ... ...

3. The question involved in these appeals is - whether the High Court was justified in confirming the order passed by the Labor Court reinstating the respondent workmen with 25% back wages in spite of specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established. Apparently, it would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though a number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or legalised by reinstatement in service with full or part of back wages.

xxx xxx xxx

6. As stated above the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in my view, the Labour Court materially erred in setting aside the order

passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, maybe for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled. (Re : Municipal Committee, Bahadurgarh v. Krishnan Behari.) In U.P. SRTC v. Basudeo Chaudhary this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs.65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering @ Rs.5.35 per head and also by making entry in the way bill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corpn. Ltd. v. Kala Singh this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held (at SCC pp. 161-62, para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty.

... ... ...."

23. In the above view of the matter, it is not a case

in which powers under Section 11-A of the I.D. Act could have been exercised at all. In view of what is stated above, in my view, the Tribunal has committed an error apparent on the face of the record in coming to the conclusion that the charge-sheet is required to be quashed as it is served after a period of three years. The Tribunal has also clearly erred in coming to the conclusion that the Enquiry Officer was required to give finding against each of the charges. As stated above, the charge-sheet was issued within a period of three years from the date of the alleged incident and after the charges were framed, the delinquent officer pleaded guilty on his own volition and without there being any threat, coercion or force and, therefore, when there is a voluntary admission on the part of the delinquent accepting the charges, it was not necessary for the Enquiry Officer still to proceed, in detail, with the enquiry proceedings or to give finding against each of the charges separately, especially when the employee has pleaded guilty regarding all the charges. Both the aforesaid grounds on which the Tribunal has allowed the Reference cannot be sustained and the order of the Tribunal is required to be set aside as the Tribunal has not considered the facts and circumstances of the case in its proper perspective and has committed an error of law in reaching the conclusion that the departmental enquiry is vitiated or that the charge-sheet is required to be quashed on the ground of delay, and coupled with the said facts, the fact that the concerned employee has also given Pursis at Exhibit 53, stating that he is not challenging the legality and validly of the enquiry Officer's report, is also required to be taken into consideration and the disciplinary authority has considered the question of penalty and has applied his mind while coming to the conclusion that looking to the charges, it is a fit case in which only dismissal order is required to be passed. This is also not a case in which powers under Section 11-A of the I.D. Act could have been exercised in favour of the employee and looking to the seriousness of the charges, which are ultimately proved on the basis of his own admission, no other penalty except removal can be inflicted on the concerned workman.

So far as the questions of giving of Enquiry Officer's Report or giving an opportunity of hearing before imposing penalty are concerned, since there was no such provision in the Certified Standing Orders at the

relevant time, it was not incumbent upon the petitioner-Management to give any hearing or to submit Enquiry Officer's report. As per the judgment of the Apex Court in Oriental Insurance Company Limited v. S. Balakrishnan, 2001 AIR SCW 2450 (supra) wherein the Honourable Supreme Court referred to the Constitution Bench judgment in E.C.I.L., Hyderabad v. B. Karunakar, 1994 AIR SCW 1050, as well as in view of the case law discussed above, in the instant case, it cannot be conceived that any prejudice is said to have been caused to the delinquent and, therefore, it cannot be said that non-supply of the Enquiry Officer's Report could have vitiated the entire proceedings.

On all the aforesaid grounds, the order of the Tribunal is required to be quashed and set aside and it is accordingly set aside. The petition is accordingly allowed. Rule is made absolute with no order as to costs.

24. Before parting with this order, it is clarified that Mr.M.R. Bhatt, learned Advocate for the petitioner, has stated that if any amount is required to be paid towards Section 17-B of the Industrial Disputes Act and if it is not paid, the same will be paid to the respondent-workman immediately.

( P.B. Majmudar, J. )

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(apj)